

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3454 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARAT SHANTILAL SHROFF

Versus

GOVERNMENT OF GUJARAT

Appearance:

MR Apurva S VAKIL for Petitioners

Mr. S.T.Mehta for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 09/10/98

ORAL JUDGEMENT

By means of this petition, the petitioners have sought for quashing the order serial no.ULC/3491/2277/3736/V.3 dated 24.1.1994 passed by the Deputy Secretary, Revenue Department, Government of Gujarat, Sachivalaya, Gandhinagar.

2. The learned counsel for the petitioners submitted that the land of survey nos. 167 and 168 was purchased by all the six petitioners on 2.9.71 in the name of M/s.Shantilal Manilal and Brothers. On 10.11.74, a distribution deed was also executed amongst six petitioners and the share of each petitioner comes to 662.25 sq.mtrs. of land. By an order dated 21st March,1986 the Competent Authority held that there is no excess land. However, the Government thereafter issued a show cause notice to the parties on 18.11.91 in exercise of the powers under section 34 of the Urban Land (Ceiling and Regulation) Act, 1976. The Government cancelled the order of the Competent Authority and declared 2473 sq.mtrs. of land as excess land.

3. The learned counsel for the petitioners has challenged the order of Government on the ground that this is an ex parte order. No notice was issued to all the affected persons as required under proviso to section 34 of the Act. Notice was served only on the petitioner no.1 Bharat Shantilal Shroff and no notice was issued to petitioner nos. 2 to 6. He further contended that the Government has treated the partnership firm as one unit. He contended that on the date of hearing, the petitioner no.1 sent an application for adjournment on the ground of illness, but without affording him a reasonable opportunity, the Government has passed the impugned order in exercise of the powers under section 34 of the Act after inordinate delay and therefore, the order of the Government is not sustainable in the eye of law.

4. The learned Assistant Government Pleader contended that the property has been purchased in the name of the firm and as such it is the property of one unit of the firm and it is not a property of six persons.

5. I have considered the submissions made on behalf of the parties and perused the relevant record. This is a case in which the petitioner no.1 made a request to adjourn the case on the ground that he was unable to attend the proceedings due to illness. He also supported his application with a medical certificate. It appears that the said application was rejected by the Government without assigning any appropriate reasons. Thus, the order was passed without hearing the petitioner. Secondly, the Government has considered the property as one unit of the firm though distribution deed had already been executed prior to coming into force of the Urban Land (Ceiling and Regulation) Act, 1976. The property cannot be treated as the property of only firm i.e.fiduciary person. In the firm itself names of all

the affected persons are mentioned, but the show cause notice is issued only to the petitioner no.1. In view of the fact that the Government is required to issue show cause notice to all the affected persons as per proviso to section 34 of the Act, the impugned order is illegal and bad in law. Thus, in my view the Government has committed an error on the face of the record in exercising powers under section 34 of the Act, as a result, the order is illegal and not sustainable in the eye of law and requires to be quashed and set aside.

5. Accordingly, the petition is allowed.

The order no. ULC/3491/2277/3736/V.3 dated 24.1.1994 passed by the respondent no. 1 and the show cause notice dated 4.2.94 issued by the Competent Officer and Additional Collector, Vadodara are quashed and set aside. The matter is remanded to the Competent Authority and Additional Collector, Vadodara to decide afresh after affording a reasonable opportunity of hearing to all the affected parties in accordance with law, at the earliest, preferably within a period of three months from the date of presentation of the certified copy of this order. The petitioners will be at liberty to raise all the contentions before the Competent Authority which they have raised in this petition. Rule is made absolute accordingly with no order as to costs.

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